

### **REMARKS/ARGUMENTS**

Claims 1-16, 18-26 and 29-32 were presented for examination and are pending in this application. In a Final Official Office Action dated April 21, 2006, claims 1-16, 18-26 and 29-32 were rejected. The Applicants thank the Examiner for his consideration and address the Examiner's comments concerning the claims pending in this application below.

Applicants herein amend claims 1, 10 and 21 and respectfully traverse the Examiner's prior rejections. No claims are presently canceled and no new claims are presently added. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution and issuance of the application. In making this amendment, Applicants have not and are not narrowing the scope of the protection to which the Applicants consider the claimed invention to be entitled and do not concede, directly or by implication, that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicants reserve the right to pursue such protection at a later point in time and merely seek to pursue protection for the subject matter presented in this submission.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and withdraw them.

#### **Rejection of the Claims under 35 U.S.C. §102**

Claims 1-16, 18-26 and 29-32 were rejected under 35 U.S.C. §102 as being anticipated by Netscape Application Builder, User Guide, 1999 ("NAB"). Applicants respectfully traverse these rejections in light of the aforementioned amendments and the following remarks.

The Applicants' invention claims an application platform that lies between commerce application software and the application's server to form a universal

interface. This allows the application software and the server on which it runs to be platform independent. Thus the data repository housing the data elements, the applications software, and the presentation data are all platform independent.

The Examiner refers to NAB as disclosing the present invention. Prior to the present invention, applications built using NAB, as disclosed in the NAB, were only deployable on the Netscape Application Server. See NAB C2-5. Other application builder tools known to one in the art shared this type of limitation, i.e. being restricted to a particular server environment. The present invention provides and claims an interface and functional support as an intermediate layer between the application software and the server to allow application software developed from various tools to be implemented on any server environment. Thus the presentation data can be presented on any server capable of server-side presentation logic. Furthermore, the data accessed by the application can be from a repository that is independent of the run-time platform on which the application is running. This cross-platform support is novel to the NAB.

To be anticipated, each element of a claim must be disclosed either expressly or inherently. The classic test for anticipation, as cited in *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744 (Fed. Cir. 1987) *cert. denied* 484 U.S. 1007 (1988), states "that which literally infringes if later, anticipates if earlier." NAB, if it were written after the present application, would not infringe the present application as currently claimed. Specifically, NAB does not provide for cross-platform support allowing software portability. NAB does not possess the ability to plug into different backend data repositories using an abstract data layer with the application software running on top. Furthermore, the presentation logic is specific to a Netscape Application Server and not any server that supports server-side presentation logic. While one may be tempted to argue that JAVA

and Enterprise JavaBeans are platform independent, it would be incorrect to apply that association with NAB, a software development tool that is specifically written for the Netscape environment. For a limitation to be inherent in a reference, it must naturally follow for what is disclosed. A limitation that may follow, is possible, or even obvious, is not inherent. Mere probability or possibility are irrelevant to the analysis of anticipation. As the NAB would not infringe the present application as claimed, it can not anticipate the application. The Applicants acknowledge the similarity of many elements of NAB to the present application and that the differences between NAB and the present application are subtle. As the Applicants co-authored NAB, these similarities are understandable. Likewise, the Applicants fully understand the limitations of NAB and address these in the present application. These differences, though subtle, are nonetheless significant.

In view of all of the above, the claims are now believed to be allowable and the case in condition for allowance which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicants' attorney at the telephone number listed below.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

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Respectfully submitted,



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